IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No.320 of 2006

Judgment reserved on: March 9, 2007

Decided on : March 13, 2007

Pardeep Kumar **…..Appellant.**

VERSUS

State of Himachal Pradesh **…..Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : **Mr. G.R. Palsara, Advocate.**

For the Respondents : **Mr. Ashok Chaudhary, Additional Advocate General.**

Surjit Singh, Judge

Appellant is aggrieved by the judgment of the Fast Track Court, whereby he has been convicted of offences, under Sections 376, 342 and 506 IPC and sentenced as follows:

1. Section 376 IPC	Seven years imprisonment and fine of Rs.25,000/- and in default of payment of fine, simple imprisonment for one year.
2. Section 342 IPC	One year imprisonment and fine of Rs.500/- and in default of payment of fine, simple imprisonment for fifteen days.
3. Section 506 IPC	One year imprisonment and fine of Rs.1,000/- and in default of payment of fine, simple imprisonment for three months.

2. First, the prosecution version may be noticed. On 18.3.2006, prosecutrix, who was then aged about 21 years, was all

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Whether the reporters of the local papers may be allowed to see the Judgment?

alone in the house, as her two sisters-in-law (*Jethanis*) had gone to the forest to collect fodder for the cattle. The prosecutrix had been left behind for cooking meals and for taking care of the cattle. Around 11 or 11.30 a.m., when she was there in the cattle-shed, which is at some distance from the house, the appellant went there, bolted the door from inside and also placed a bamboo ladder, which was available in the cattle-shed, against the door so that it could not be opened and then forcibly removed the *Salwar* of the prosecutrix and tore her shirt and committed rape on her. The prosecutrix cried for help, but there being no habitation nearby, nobody came to her rescue. However, the two sisters-in-law of the prosecutrix, who had gone to the forest, returned in the meanwhile. When they were at a distance of 50-60 yards, they heard the cries of some one, but could not make out who was crying. When they reached near the cattle-shed (as the passage leading to their house is by the side of the cattle-shed), they again heard the cries and realized that it was their younger sister-in-law who had been crying. They peeped into the cattle-shed through the chinks of the door and saw that the appellant-accused was mounted on the prosecutrix and was committing rape on her. One of her sisters-in-law, named Sudarshna Devi (PW-3), then went to call one Raju from his shop for help. After 10-15 minutes Raju came and he also saw the appellant, as also the prosecutrix, in the cattle-shed. He saw that the prosecutrix was naked in the lower portion of her body, that is to say, she was not wearing *Salwar*. The appellant threatened Raj Kumar that in case he came nearby he would kill him. Thereafter, the appellant wore his pants and ran away. Satya Devi (PW-4), Member of the Gram Panchayat, was also called to the spot. She noticed an injury on the ear of the

prosecutrix. She then informed the Pradhan of the Panchayat, PW-7 Udham Singh, who advised the prosecutrix to approach the police. A complaint was got written by the prosecutrix on the spot and with that complaint she went to Police Post Thural in the company of one of the elder brothers of her husband. It may be stated that the husband of the prosecutrix was employed those days at a *Dhaba* at some distant place in Punjab State. The Police arrested the appellant on the next following day and got him medically examined. The Doctor opined that there was nothing to suggest that he was incapable of committing sexual intercourse. The prosecutrix was also got medically examined. She being a married lady and exposed to sexual intercourse on that count, the Doctor could not give definite opinion whether rape had been committed or not. The Police recovered from the spot, the string of *Salwar* and some pieces of broken bangles of the prosecutrix. They also recovered the shirt of the prosecutrix, which was torn. Clothes of the prosecutrix and the appellant were sent to the Chemical Examiner. Semen was noticed on the underwear of the appellant by the Chemical Examiner, per his report Ex. PA.

3. The appellant was ultimately challaned. The Judicial Magistrate concerned committed the case to the Sessions Court. The case was assigned to the Fast Track Court by the Sessions Judge. The Fast Track Court charged the appellant for offences, under Sections 376, 342 and 506 IPC, and on his pleading not guilty tried him on the said charge and ultimately convicted and sentenced him, as aforesaid.

4. I have heard the learned counsel for the appellant and the learned Additional Advocate General for the respondent, and gone through the record.

5. Learned counsel for the appellant submitted that this is a case of consensual intercourse and not of rape and that when the prosecutrix was noticed in a compromising position with the appellant by her sisters-in-law, she with a view to saving herself from disgrace and infamy**,** started crying and lodged false report of rape.

6. A perusal of the record shows that neither in the statement, under Section 313 Cr.P.C., such a plea was raised by the appellant nor was any suggestion put to the witnesses of the prosecution on the lines of this plea. As a matter of fact, the appellant denied that he had gone to the cattle-shed and committed sexual intercourse with the prosecutrix.

7. The prosecutrix, who appeared as PW-2, very categorically stated that when she was in the cattle-shed, where she had gone to feed and water the cattle, the appellant came there and bolted the door of the cattle-shed and then placed a bamboo ladder against the door to tightly fasten it and threw her on the floor and then loosened and pulled the string of her *Salwar* and also tore her *Salwar*. She also stated that in that process she sustained an injury on one of her ears and blood started oozing. She stated that she cried for help, but nobody came to her rescue, as no house or cattle-shed etc. is nearby and that ultimately when attracted by her cries her two sisters-in-law, who were returning after collecting grass from the forest reached and asked the appellant to release her, the appellant threatened them that they too would meet the same fate as she (the prosecutrix). She has stated that one of her sisters-in-law then brought a shopkeeper, named Raju (PW-6) and even at that time the appellant had been committing rape on her. She further stated that it was only when after committing the rape the appellant opened the door to flee away that she could come out from the cattle-

shed and that she could not wear the *Salwar* as it was torn and its string had been removed and that one of her sisters-in-law gave her shawl to her to cover her naked lower part of the body.

8. PW-3 Sudarshana Devi, one of the sisters-in-law of the prosecutrix, has corroborated her testimony in material particulars. She has stated that when she and another sister-in-law returned around 10.30 or 11 a.m. and reached near the cattle-shed, they heard the cries raised by the prosecutrix and saw the accused committing rape on her. She has stated that the prosecutrix was lying on the floor. She has stated that when she and her other sister-in-law asked the appellant to release the prosecutrix he threatened that they would also meet the fate of the prosecutrix in case they came in his way and that thereafter she and her other sister-in-law went to call Raju. It is also stated by her that 10-15 minutes thereafter Raju reached the spot and the appellant was still there committing rape on the prosecutrix and when Raju challenged the appellant he threatened that in case he entered the cattle-shed he will be done to death.

9. Raju, who was examined as PW-6, corroborated the testimony of PW-3 Sudershana Devi.

10. PW-4 Satya Devi is the Member of the Gram Panchayat. She has stated that the mother-in-law of the prosecutrix came to her house to inform that her daughter-in-law had been raped by the appellant and asked her to see the spot and that when she went to the spot she saw that the prosecutrix was having an injury on an ear and a scar on cheek and that the prosecutrix told her that she had been raped by the appellant.

11. PW-7 Udham Singh, Pradhan of the Panchayat says that he was informed telephonically by PW-5 Satya Devi, Member Gram Panchayat, to reach village Bhila, as a lady had been raped and that when he went to the village, the prosecutrix presented to him an application, Ex. PW-2/A, and that he made an endorsement on that application, which is Ex. PW-2/B, and directed the prosecutrix to submit the same to the Police.

12. PW-13 ASI Yash Pal conducted the investigation of the case. He stated that on 19.3.2006, or say the day following the day of the occurrence, he went to the spot and prepared the site plan. He further stated that he took into possession the string (Ex.P-7) of the *Salwar* and pieces of the broken bangles (Ex. P-8) from the spot. He also stated that the appellant was summoned to the Police Post on 18th and formally arrested on 19th and thereafter he was got medically examined.

13. No specific suggestion was put to the prosecutrix or other witnesses about the plea of consent. The only suggestion to which the attention of the Court was drawn and which, according to the learned counsel for the appellant, is indicative that this is a case of sexual intercourse with the consent of the prosecutrix and which was given to the prosecutrix is that a day before the alleged occurrence she had visited the house of the appellant to get prepared a wooden *Chowki* for her husband's sister. This suggestion in no way supports the plea that the prosecutrix was a consenting party to the sexual intercourse.

14. On the contrary, there are several circumstances, which rule out the possibility of this being a case of consensual intercourse. The *Salwar* of the prosecutrix was torn. The fact is proved by the

unchallenged testimony of the prosecutrix herself and her sister-in-law Sudarshana Devi (PW-3), as also the report of the Chemical Examiner, Ex. PA. The trial Court has also recorded an observation in the course of recording the testimony of the prosecutrix that *Salwar*, which came out of a sealed parcel that was opened in the Court, was torn. Now, if it was a case of intercourse with consent of the prosecutrix, the *Salwar* could not have been torn or its string could not have been pulled and removed. Similarly, if the prosecutrix had been a consenting party, she would not have chosen that time for sexual intercourse with the appellant when her two sisters-in-law, who had gone to the forest around 8 a.m., were about to return from the forest with the grass. It has come in the evidence of the prosecutrix (PW-2) and her sister-in-law Sudarshana Devi (PW-3) that the two sisters-in-law of the prosecutrix had gone to the forest at 8 a.m. and they were expected to be back around 10.30/11.00 a.m. Had the prosecutrix been a willing party, the act of intercourse would have been completed much before the time when the two sisters-in-law of the prosecutrix were expected to return from the forest.

15. As a result of the above discussed position, it is held that the appellant has rightly been convicted of and sentenced for the offences under Sections 376, 342 and 506 IPC by the trial Court. Consequently, the appeal is dismissed.

March 13, 2007(sd) **(Surjit Singh), J.**